Confidential

Public Works (190) Department.

~~afterdespatch~~

(Copy)

G.O., No. 1254 I

Confidential

DATED 11 Nov. 1904.

[Despatch Abstract.]

Peranai Suit ~~in the High Court~~

Directing Mr. Ramalinga Aiyar, Ex: Engr., Madura Dn., to assist the Govt. Pleader, Madura, in the preparation of a draft counter-affidavit in connection with the ——— and to meet the Advocate-Genl. at Madras before the 20th inst. with the draft.

[illegible initials]

 Issue 12-11-04

Indexed [illegible] 11

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Very urgent

Public Works (1904) Department.

CURRENT No. 11101

FROM

THE REVENUE DEPARTMENT.

SECRETARY TO GOVERNMENT, 11 NOV 1904, PUBLIC WORKS DEPARTMENT.

Mis No. 1848 Received 11-11-1904

Dated 10th November 1904. Registered 11-11-1904

Enclosures

Rk 11-11-04 at 3-30 P.M.

SUBJECT.

Requesting the Collector of Madura to instruct the Govt. Pleader to prepare and submit counter affidavits in connection with the Peranai Suit in the High Court.

BACK PAPERS.

G.O. 645 I dy 13-6-04 " 732 I dy 5-7-04	

FURTHER PAPERS.

$\frac{F}{16}$ 2,000—25-8-04.

CONFIDENTIAL.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read again G.O.No.686 R.,dated 4th November 1904,recording letter from the Government Pleader,Madras regarding printing of documents &c. connected with the Peranai Suit in the High Court.

Read also letter from the Advocate General,Madras,dated November 1904.

Order thereon Mis.No.1848 Rev.,dated 10th November 1904.
Confdl. No. 154

Copies of the papers received from the Advocate-General will be sent to the Collector of Madura with the request that the necessary instructions may be issued to the Government Pleader, Madura,to prepare a draft counter-affidavit in consultation with Mr.Ramalinga Aiyar,Executive Engineer.

2. Orders will be issued in the Public Works Department instructing Mr.Ramalinga Aiyar to assist the Government Pleader and meet the Advocate General at Madras before the 20th instant with the draft counter-affidavit.

(True Extract)

(Sd.) J.N.Atkinson,

Ag.Secretary to Government.

To the Hon'ble the Advocate-General, with papers returned

,, Colletor of Madura, with copies of papers.

,, Public Works Department.

Copy to the Board of Revenue,Land Revenue.

Forwarded to the Public Works Department.

(By Order)

C. Ratnavelu Naidu

Registrar.

Ack 10/11/04

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read again G.O.No.6[illegible] R.,dated 4th November 1904,recording letter from the Government Pleader,Madras regarding printing of documents connected with the Perani Suit in the High Court.

Read also letter from the Advocate General,Madras,dated [illegible] November 1904.

<u>Order thereon Mis.No.1961 Rev.,dated 10th November 1904.</u>

Copies of the papers received from the Advocate-General will be sent to the Collector of Madura with the request that the necessary instructions may be issued to the Government Pleader, Madura, to prepare a draft counter-affidavit in consultation with Mr.Ramalinga Aiyar, Executive Engineer.

2. Orders will be issued in the Public Works Department instructing Mr.Ramalinga Aiyar to assist the Government Pleader and meet the Advocate General at Madras before the 20th instant with the draft counter-affidavit.

(True Extract)

(Sd.) J. [illegible] Atkinson,

Ag.Secretary to Government.

To the Hon'ble the Advocate-General, with papers returned

" Collector of Madura, with copies of papers

" Public Works Department.

Copy to the Board of Revenue, Land Revenue.

Forwarded to the Public Works Department.

Affidavit.

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE.

AT MADRAS.

Appeal No.60 of 1904.

Civil Miscellaneous Petition,No. of 1904.

I,M.Doraisawmy Pillai,son of Maillappa Maistry,Hindu aged 53,residing in South Masi Street,Madura,do solemnly and sincerely affirm and state as follows:-

1. That I am employed under Mr.Robert Fischer of Madura as Maramat Overseer.

2. That I have visited the Peranai Anicut several times both before and after the Peranai Dam suit was filed in the West Sub-Court,Madura.

3. That I have prepared plans of the Anicut across the river Vaigai for Mr.Fischer's use and my plan of the Anicut was filed in the suit as Exhibit KK.

4. That since the suit was decided by the Subordinate Judge,I was directed by Mr.Fischer to proceed to the Peranai to see what new works are in progress and I and Mr.Venkatasaloo Naidu,Mr.Fischer's manager went to the Peranai on or about 3-7-

5. That I have prepared a plan showing the changes and alterations made since the filing of the suit I have given particulars of the alterations in the plan and they are correct. The plan is annexed herewith and is marked Exhibit A.

6. That the new works now in progress are a regulator right across the river with 10 ~~xxx~~ vents and a new head sluice with 6 vents for the Periyar Main Canal to take the place of the existing Anicut and head sluice.

7. That the object of the new regulator is to give power to the Public Works people to regulate the supply of water in the river at the Peranai and to prevent sand choking the Main Canal assist the case at present.

8. That under existing conditions all water rising about the crest of the Anicut including the iron shutters complained of in the suit must flow down the river and it is not ~~xx~~ in the

power of any one to prevent its so flowing.

9. That if the new works are completed, the dam will be demolished and the Public Works Authorities can successfully regulate the flow of water in the river and more silt will be sent down the river than has hitherto been the case.

10. That most of the new works shown in the plan A were finished after the decision of the Sub-Judge.

11. That the works are being rapidly pushed through.

12. That the new works must interfere with the flow and quantity of water in the river below the Peranai and lower ripa-irian owners are likely to be injuriously affected by the new works and they will be completely at the mercy of the Public Works authorities for the supply of water to their villages.

13. That Mr.Fischer applied to the Executive Engineer, Madura, for a plan of the new works now being carried on, but that officer refused to comply with his request.

14. That temporary obstructions are thrown over the anicut by means of turf and otherwise for proceeding with the new Regulator and they prevent the flow of water in the river below the anicut.

15. That channels taking off from the Vaigai below the Peranai to irrigate Plaintiff's villages have open heads and they are likely to get chocked by more silt being sent down the river.

16. That silt in the Vaigai has considerably increased since the Periyar Project was opened.

Solemnly affirmed to and sign his name at the&c.

(Sd.) Doraisawmi Pillai.

ABR
10/11/04.

Affidavit.

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE AT MADRAS.

Appeal Suit No.60 of 1904.

Civil Miscellaneous Petition No. of 1904.

Mr.Robert Fischer and 3 others... Appts. Petrs.

versus

The Secretary of State for India in Council., Respt Ctr.Pet

I P.R.Venkatesalu Naidu, son of Ramaswami Naidu, Hindu, Vaishnavite, Manager under Mr.Robert Fischer, first Appellant in this cause, aged 44, do solemnly and sincerely state as follows:-

1. That I am the manager under Mr.Fischer the 1st Appellant in the case.

2. Under instructions from Mr.Fischer, I went in company with Doraisawmy Pillai, Maramat Overseer under Mr.Fischer and inspected the Peranai Dam on 3-7-04.

3. That I am well acquainted with the conditions of the anicut as it was in 1901.

4. On inspection, I found the following new works in progress and also changes in the conditions of the old dam.

(a) At the spot where the old scouring sluice existed, the sluice have been completely blocked up and a circular wing wall measuring 24 feet high and 100 feet long has been newly erected just south of the scouring sluice.

(b) To the south of the said parapet or wing wall across the bed of the river Vaigai, foundations have been newly laid to an extent measuring about 500 ft. over which there are masonary structures for 10 new shutter sluices and at the southern end of the foundations thus laid there is a wing wall of the same dimension as the one on the northern end.

(c) To the north of the old scouring sluice and in continuation of masonary structure referred to in clause (b) above, a similar foundation to an extent measuring about 40 ft. has been laid so as to reach the northern bund of the Peria main channel branching off from the river Vaigai and over the said foundation there are masonary structures for two shutter sluices.

(d)

(d) The paving stones at the bottom which formed part of the structure of the old dam have been removed and are being used for the new regulator now in progress.

(e) To a length of nearly 500 ft. over the falling shutters new turf bunds to the height of 2½ ft. have been newly put up.

(f) At the western end of the old dam to a length of 38 ft. and a height of 2¼ ft., the dam has been newly raised by masonary construction.

5. There are nearly 200 coolies working daily at the dam.

6. That if the new regulator is completed, the Govt. will be in a position to control all the water in the Vaigai at the spot even in times of good freshes and floods.

7. That, under existing conditions, good freshes and floods escape over the anicut and defendant is unable to control the same.

8. That by means of the new regulator more silt will be sent down the river than used to be carried by the river hitherto.

9. That channels taking off from the Vaigai for irrigating Plaintiff's villages have open heads and they are likely to be chocked and silted up by the construction of the new works.

10. That the system of irrigation in Plaintiff's villages is mostly by tanks where water is stored and any interference with the freshes and floods in the Vaigai must seriously interfere with the storage of water in the tanks.

Solemnly affirmed Etc.,

(Sd.) P.R.Venkatasalu.

ARD
10/11/[illegible]

MEMORANDUM OF CIVIL MISCELLANEOUS PETITION.

Under sections 493 and 582 of Civil Procedure Code.

In the High Court Judicature at Madras,

Appeal Suit No.60 of 1904.

Civil Miscellaneous Petition No. of 1904.

1. Mr.Rober Fischer.	)	
2. A.R.R.M.Arunachellam Chetty	)	Appellants. Petrs.
3. R.M.M.E. Lutchumian Chetty	)	

versus.

The Secretary of State for India in Council.) Respondent Ctr. Petr.

Petitioners above named beg to state as follows:-

1. That petitioners brought O.S.No.22 of 1901 on the file of the Subordinate Court, Madura, west, for themselves and other lower ~~xapx~~ repairian owners of the river Vaigai for various ~~xxx~~ reliefs affecting the repairian rights of the parties at the site of the Peranai Anicut in the said river.

2. That the case mainly for the Plaintiffs is that the defendant had illegally raised the crest of the old anicut and thereby obstructed the course of the river and the flow of water therein and had also diverted the water of the said river by means of a divertion channel 100 ft. wide by means of which he carried the water to Nonriparian tracts and claimed a right to do so.

3. That at the site of the Peranai there was an old small diversion channel of about 20 or 30 ft. width by which the defendant was irrigating about 4,000 acres and in its place defendant had substituted the new diversion channel and was irrigating therefrom nearly 100,000 acres from the waters of the said river and the defendant claims a right to continue to do so.

4. The defendant's plea is that some 80 miles higher up the river he by means of artificial works known as the Periyar Project augments the natural supply in the river and is therefore entitled to take the whole of it and more at the site of the Peranai.

5. Defendant has also introduced regulating sluices to the old anicut by means of which when waters do not over flow the anicut he is able to send water or not below the anicut just as it suits him.

6. Plaintiffs are holders of Zamindari lands under sannads of permanent settlement and the river Vaigai in the Zamin limits belongs to them as is also found by the Sub-Judge in this suit and the river is a feeder to the Ramnad big tank into which it empties itself.

7. The questions in dispute in the suit and appeal are

(a) Whether the defendant is entitled to put any obstruction in the river bed in addition to the mamul anicut to which alone the defendant had acquired a right by a prescription.

(b) Whether the defendant has any right to interfere with the usual flow of water and to obstruct and divert it or regulate it at the site of the Peranai.

8. The Sub-Judge who heard the suit for many months has disposed of the suit on only one issue namely that the lower riparian proprietors had not shown sensible diminution of the supply of water they used to have in the pre-Periyar days and has not considered the other issues in the case and holds that the Plaintiffs should come into Court only when injury is actually done.

9. That Plaintiffs have preferred an appeal against the decree of the Sub-Judge and the same is pending in this Hon'ble Court and they are advised they have a fairly strong case.

10. That the defendant has with a view to more effectually control the supply in the river at the Peranai commenced pending the suit works of a very extensive nature and he is rapidly pushing on with the works since the decision of the Sub-Judge. The works are fully described in the affidavit and plan filed herewith and when they are completed the defendant will be in a position to stop all supply below the Peranai, if and when he likes and Plaintiffs will have to be at the mercy of the defendant for getting their supply of water even in times of good freshes and floods.

11. That even according to the finding of the Subordinate Judge defendant is not the owner of the river bed up to the old scouring or sand sluices i.e. nearly 900 ft. of the existing anicut and that the same belongs to the Ammayanayakanur Zamindari who is also a lower riparian proprietor.

12. That the defendant threatens to blow up the old anicut as soon as the new works are completed.

13. That by defendant's own survey plans and settlement registers Exhibits R series, S series, BBB and CCC filed in the suit, the river at the Peranai is not within Govt. limits but is in Zamin limits and the river enters Govt. limits only about a mile below the anicut at Vilanpatti.

14. That if the Plaintiffs should succeed in the suit, their right so decreed might be nullified by the new works now in progress.

15. That the defendant is not likely in any way to be damnified by his delaying the works till the rights of the parties are determined.

16. That when defendant began the foundation of the new works he put up additional obstructions on the anicut. Plaintiff applied before the trial of the suit began to restrain the defendant from proceeding with such works but on defendant's Enginer's affidavit that by those works then in existence the supply of water below the anicut was not interefered with this Hon'ble Court refused to grant the injunction in C.M.A 120 of 02.

17. That since then the suit has been tried and voluminous evidence has been recorded and the Sub-Judge has found that the defendant has no right to interfere with the Mamul supply below the river but has dismissed the suit merely on the ground there was no such interference at the time of the suit.

18. That with the new regulator the defendant will be able to divert into the main canal all water which now must overflow the anicut.

19. That for the reasons herein stated and for the reason stated in the accompanying affidavits this Hon'ble Court may be pleased to grant an injunction restraining the defendant pending disposal of appeal No.60 of 1904 from proceeding with

any works in the bed of the river at the Peranai which are likely to obstruct the flow of water below the anicut or works which place it in the power of the defendant to regulate the water supply at the Peranai or at any other spot in the river Vaigai or to pass such other order as this Hon'ble Court may deem fit.

(Sd.) J. Rangachari

Vakil for petitioners.

(Sd.) R.Fischer.

I Robert Fischer, the 1st petitioner in the cause herein do hereby declare that all the matters ~~etc.~~ herein stated are true to the best of my knowledge except as to matters stated on information and belief and as to those matters I believe them to be true

(Sd.) R.Fischer.

Dated 21st October 1904.

C.S.

Confidential

PUBLIC WORKS DEPARTMENT,
IRRIGATION BRANCH.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

G.O. Mis: No. 1848 Rev: d/ 10th Novr. 1904.

Order. No. 1254 I d/ 11-11-04

Communicated to Mr. Ramalinga Aiyer, Executive Engineer, Madura Division, who will assist the Government Pleader, Madura in preparing the draft counter-affidavit and meet the Advocate General at Madras before the 20th instant with the draft.

Issue

[signature] 11.11.04

[signature] 11/11/04 D.S.

To,
Mr. Ramalinga Aiyer
Executive Engineer
Madura Dn. - despd. 11.11.04

Copy to the Supg Engr 6th Circle
" to the Chief Engr for Irrign

DESPATCHED
12 NOV 1904

[initials]
11.11.04

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106/98/R1/OBM